

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA

v.

DERRICK STEVEN CLEMONS

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Criminal No. 08-28
Electronically Filed

SUPPLEMENTAL ORDER OF COURT ON SENTENCING FACTORS

AND NOW, this 1st day of November, 2010, in accordance with Fed.R.Crim.P. 32(i) and Local Rule of Court LCrR 32.1(H), the Court makes the following additional findings and rulings with respect to the remaining sentencing factors in dispute:

1. In accordance with the Court's tentative findings and rulings filed on October 26, 2010 (doc. no. 166), the Probation Office filed its second addendum setting forth its position regarding whether defendant's alleged prior drug sales (April 13 and April 18, 2010) should be included as "relevant conduct."
2. According to the Probation Office, the parties and the Probation Office are in agreement that these alleged sales will not be included as "relevant conduct."

Therefore, the total offense level is 18 and with a criminal history category of V, the advisory Guideline range is 51 to 63. Because there is a statutory minimum of at least 60 months' imprisonment, the Guideline range is 60 to 63 months' imprisonment, pursuant to U.S.S.G. § 5G1.1(c).
3. Defendant's Motion for Reconsideration based upon the United States District Court for the District of Maine decision in *United States v. Douglas*, Crim. No. 09-202P-H,

Doc. No. 58 (D. Maine October 27, 2010) (doc. no. 169) is DENIED. The Court finds more persuasive the three cases decided by the United States Courts of Appeals for the Sixth, Seventh and Eighth Circuits, as discussed in the prior Tentative Findings and Rulings (doc. no. 166).

4. The sentencing proceeding will proceed in accordance with the foregoing findings and rulings, and the Court's prior findings and rulings (doc. no. 166).

SO ORDERED this 1st day of November, 2010.

s/Arthur J. Schwab

Arthur J. Schwab

United States District Judge

cc: All counsel of record